IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.79 OF 1999

The Commissioner of Income Tax
Pune .. Applicant.
V/s.
M/s.Yeshwant SSK Ltd., Theur .. Respondent.

Mr.Ashok Kotangale with Mr.Parag Vyas
for the applicant.

Mr.Pramod Vaidya i/b. S.N. Inamdar
for the respondent.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 24TH OCTOBER, 2005.

P.C. :

1. Heard the learned counsel for the parties. The Tribunal has referred following questions for the opinion of this Court, reading as under :

> Whether on the facts and in the circumstances of the case the ITAT relying on the decision of its Special Bench in the case of Shri Chhatrapati SSK Ltd. (198 ITR 78 - AT) was right in deleting the following additions by holding that the various funds/deposits collected by the assessee society out of the sugarcane purchase price payable to the cane growers are not trading receipts of the assessee ?

A.Y. 1974-75 : 1. Non-refundable deposit
2. Education fund.

A.Y. 1986-87 1. Non-refundable deposit,
2. Cane development fund,

A.Y. 1987-88 1. Non-refundable deposit,
2. Cane development fund,

A.Y. 1988-89 1. Non-refundable deposit,

2. Cane development fund
3. Education fund

2. In so far Non-refundable deposit for all the assessment years is concerned, the issue is covered by the decision of the Apex Court in the case of **Siddheshwar S.S.K. Ltd. V/s. CIT [(2004) 270 ITR 1 (SC)]** in favour of the assessee and against the revenue. So far as Cane Development Fund for all the assessment years is concerned, the issue will have to be referred back to the Tribunal for consideration afresh as per the judgment of the Apex Court in the case of Siddheshwar S.S.K. Ltd. (supra) as such the said issue stands remitted back to the Tribunal for consideration afresh.

3. So far as Education fund for assessment years 1974-75 and 1988-89 is concerned, the same is covered by the decision of this Court in the case of **Krishna Sah. Sakhar Karkhana V/s. CIT reported in [(1998) 229 ITR 577 (Bom)]** in favour of the assessee and against the revenue.

4. The reference is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)